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(2019/C 220/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Opinion of the Court (Full Court) of 30 April 2019 — Kingdom of Belgium

(Opinion 1/17) OJ C 369, 30.10.2017.

(Opinion pursuant to Article 218(11) TFEU — Comprehensive Economic and Trade Agreement between Canada, of the one part, and the European Union and its Member States, of the other part (CETA) — Investor-State Dispute Settlement (ISDS) — Establishment of a Tribunal and an Appellate Tribunal — Compatibility with primary EU law — Requirement to respect the autonomy of the EU legal order — Level of protection of public interests determined, in accordance with the EU constitutional framework, by the EU institutions — Equal treatment of Canadian investors and EU investors — Charter of Fundamental Rights of the European Union — Article 20 — Access to the above Tribunals and their independence — Article 47 of the Charter — Financial accessibility — Commitment to guarantee that accessibility for natural persons and small and medium-sized enterprises — External and internal aspects of the requirement of independence — Appointment, remuneration and ethics of the Members — Role of the CETA Joint Committee — Binding interpretations of the CETA determined by that Committee)

(2019/C 220/02)

Language of the case: all the official languages

Applicant

Kingdom of Belgium (represented by: C. Pochet, L. Van den Broeck, M. Jacobs and J.-C. Halleux, acting as Agents)

Operative part of the Opinion

Section F of Chapter Eight of the Comprehensive Economic and Trade Agreement between Canada, of the one part, and the European Union and its Member States, of the other part, signed in Brussels on 30 October 2016, is compatible with EU primary law.

Judgment of the Court (First Chamber) of 2 May 2019 (request for a preliminary ruling from the Gerechtshof 's-Hertogenbosch — Netherlands) — A-Fonds v Inspecteur van de Belastingdienst

(Case C-598/17) ([1])

(Reference for a preliminary ruling — Existing aid and new aid — Concept of new aid — Refund of dividend tax — Scheme widened to companies established outside the Member State concerned — Free movement of capital — Obligations of national courts)

(2019/C 220/03)

Language of the case: Dutch

Referring court

Gerechtshof 's-Hertogenbosch

Parties to the main proceedings

Applicant: A-Fonds

Defendant: Inspecteur van de Belastingdienst

Operative part of the judgment

Articles 107 and 108 TFEU must be interpreted as meaning that a national court cannot assess whether a residence condition, such as that at issue in the main proceedings, complies with Article 56(1) EC, now Article 63(1) TFEU, where the scheme for the refund of dividend tax concerned constitutes an aid scheme.

([1]) OJ C 22, 22.1.2018.

Judgment of the Court (Grand Chamber) of 30 April 2019 — Italian Republic v Council of the European Union

(Case C-611/17) ([1])

(Actions for annulment — Common fisheries policy — Conservation of resources — International Convention for the Conservation of Atlantic Tunas — Total allowable catch (TAC) for Mediterranean swordfish — Regulation (EU) 2017/1398 — Fixing of fishing opportunities for 2017 — Exclusive competence of the European Union — Determination of the reference period — Reliability of the basic facts — Scope of judicial review — Article 17 TEU — Management of the EU's interests within international bodies — Principle of relative stability — Conditions under which applicable — Principles of non-retroactivity, legal certainty, legitimate expectation and non-discrimination)

(2019/C 220/04)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Palmieri, acting as Agent, assisted by P. Gentili, avvocato dello Stato)

Defendant: Council of the European Union (represented by: F. Naert and E. Moro, acting as Agents)

Interveners in support of the defendant: Kingdom of Spain (represented initially by: V. Ester Casas and subsequently by M.J. García-Valdecasas Dorrego, acting as Agents), European Commission (represented by: F. Moro and A. Stobiecka-Kuik, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders the Italian Republic to pay, in addition to its own costs, the costs incurred by the Council of the European Union;

3. Orders the Kingdom of Spain and the Commission to bear their own costs.

([1]) OJ C 424, 11.12.2017.

Judgment of the Court (Fourth Chamber) of 2 May 2019 (request for a preliminary ruling from the Tribunal Supremo — Spain) — Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego v Industrial Quesera Cuquerella SL, Juan Ramón Cuquerella Montagud

(Case C-614/17) [1]

(Reference for a preliminary ruling — Agriculture — Regulation (EC) No 510/2006 — Article 13(1)(b) — Protection of geographical indications and designations of origin for agricultural products and foodstuffs — Manchego cheese ('queso manchego') — Use of signs capable of evoking the region with which a protected designation of origin (PDO) is associated — Concept of the 'average consumer who is reasonably well informed and reasonably observant and circumspect' — European consumers or consumers of the Member State in which the product covered by the PDO is made and mainly consumed)

(2019/C 220/05)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego

Defendants: Industrial Quesera Cuquerella SL, Juan Ramón Cuquerella Montagud

Operative part of the judgment

1. Article 13(1)(b) of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs must be interpreted as meaning that a registered name may be evoked through the use of figurative signs.

2. Article 13(1)(b) of Regulation No 510/2006 must be interpreted as meaning that the use of figurative signs evoking the geographical area with which a designation of origin, as referred to in Article 2(1)(a) of that regulation, is associated may constitute evocation of that designation, including where such figurative signs are used by a producer established in that region, but whose products, similar or comparable to those protected by the designation of origin, are not covered by it.

3. The concept of the average consumer who is reasonably well informed and reasonably observant and circumspect, to whose perception the national court has to refer in order to assess whether there is 'evocation' within the meaning of Article 13(1)(b) of Regulation No 510/2006, must be understood as covering European consumers, including consumers of the Member State in which the product giving rise to evocation of the protected name is made or with which that name is geographically associated and in which the product is mainly consumed.

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[1] OJ C 42, 5.2.2018.

Judgment of the Court (Third Chamber) of 2 May 2019 (request for a preliminary ruling from the Cour de cassation du Grand-Duché de Luxembourg — Luxembourg) — Pillar Securitisation Sàrl v Hildur Arnadottir

(Case C-694/17) ([1])

(Reference for a preliminary ruling — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Lugano II Convention — Article 15 — Contract concluded by a consumer — Relationship with Directive 2008/48/EC — Consumer credit agreements — Articles 2 and 3 — Concepts of 'consumer' and of 'transactions covered by the directive' — Maximum amount of credit — Irrelevant for the purposes of Article 15 of the Lugano II Convention)

(2019/C 220/06)

Language of the case: French

Referring court

Cour de cassation du Grand-Duché de Luxembourg

Parties to the main proceedings

Applicant: Pillar Securitisation Sàrl

Defendant: Hildur Arnadottir

Operative part of the judgment

Article 15 of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007, which was approved on behalf of the Community by Council Decision 2009/430/EC of 27 November 2008, must be interpreted as meaning that, for the purposes of ascertaining whether a credit agreement is a credit agreement concluded by a 'consumer' within the meaning of Article 15, it must not be determined whether the agreement falls within the scope of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, in the sense that the total cost of credit in question does not exceed the ceiling set out in Article 2(2)(c) of that directive, and that it is irrelevant, in that regard, that the national law transposing that directive does not provide for a higher ceiling.

([1]) OJ C 63, 19.2.2018.

Judgment of the Court (Ninth Chamber) of 2 May 2019 (request for a preliminary ruling from the College van Beroep voor het Bedrijfsleven — Netherlands) — T. Boer & Zonen BV v Staatssecretaris van Economische Zaken

(Case C-98/18) ([1])

(Reference for a preliminary ruling — Protection of health — Hygiene package — Regulation (EC) No 853/2004 — Hygiene of food of animal origin — Rules for food business operators — Specific requirements — Meat of domestic ungulates — Storage and transport — Requirements for the temperature of the meat)

(2019/C 220/07)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven

Parties to the main proceedings

Applicant: T. Boer & Zonen BV

Defendant: Staatssecretaris van Economische Zaken

Operative part of the judgment

Annex III, Section I, Chapter VII, points 1 and 3, to Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin must be interpreted as meaning that the chilling of meat after slaughter must be carried out in the slaughterhouse itself until the meat has reached a temperature throughout of not more than 7 °C before any loading of the meat into a refrigerated truck.

([1]) OJ C 152, 30.4.2018.

Judgment of the Court (Third Chamber) of 2 May 2019 (request for a preliminary ruling from the tribunal administratif de Montreuil — France) — Sea Chefs Cruise Services GmbH v Ministre de l'Action et des Comptes publics

(Case C-133/18) ([1])

(Reference for a preliminary ruling — Value added tax (VAT) — Refund of VAT — Directive 2008/9/EC — Article 20 — Request for additional information from the Member State of refund — Information to be provided within one month of the date on which the request reaches the person to whom it is addressed — Legal nature of time limit and consequences of failure to comply)

(2019/C 220/08)

Language of the case: French

Referring court

Tribunal administratif de Montreuil

Parties to the main proceedings

Applicant: Sea Chefs Cruise Services GmbH

Defendant: Ministre de l'Action et des Comptes publics

Operative part of the judgment

Article 20(2) of Council Directive 2008/9 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State must be interpreted as meaning that the time limit of one month laid down in that provision for providing the Member State of refund with the additional information requested by that Member State is not a limitation period whereby, if that period is exceeded or in the event of a failure to reply, the taxable person loses the possibility of regularising his refund application by producing, directly before the national court, additional information intended to establish the existence of his right to the refund of VAT.

([1]) OJ C 166, 14.5.2018.

Judgment of the Court (Seventh Chamber) of 2 May 2019 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — Budimex S.A. v Minister Finansów

(Case C-224/18) ([1])

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 66 — Chargeable event and chargeability of the tax — Time of the supply of the services — Construction and installation work — Taking into account the time of the acceptance of the work stipulated in the contract for the supply of services)

(2019/C 220/09)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Budimex S.A.

Other party to the proceedings: Minister Finansów

Operative part of the judgment

Point (c) of the first paragraph of Article 66 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, must be interpreted as not precluding, if an invoice relating to the performance of the service supplied is not issued or is issued late, the formal acceptance of that service from being regarded as the time when that service was supplied, where, as in the case in the main proceedings, the Member State provides that VAT is to become chargeable on expiry of a time limit running from the day when the service was supplied, provided, first, that the formality of acceptance was stipulated by the parties in the contract that binds them according to contractual terms reflecting the economic and commercial realities in the field in which the service is supplied and, second, that that formality constitutes the actual completion of the service and determines the amount of consideration due, which is for the referring court to ascertain.

([1]) OJ C 231, 2.7.2018.

Judgment of the Court (Eighth Chamber) of 2 May 2019 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — Grupa Lotos S.A. v Minister Finansów

(Case C-225/18) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Deduction of input tax — Sixth Directive 77/388/EEC — Article 17(2) and (6) — Directive 2006/112/EC — Articles 168 and 176 — Exclusion from the right to deduct — Purchase of overnight accommodation and catering services — Standstill clause — Accession to the European Union)

(2019/C 220/10)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Grupa Lotos S.A.

Defendant: Minister Finansów

Operative part of the judgment

Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as:

— precluding national legislation, such as that at issue in the main proceedings, which provides for the scope of an exclusion from the right to deduct value added tax (VAT) to be extended, after the accession of the Member State concerned to the European Union, and which means that a taxable person, providing tourism services, is deprived, from the entry into force of that extension, of the right to deduct VAT paid on the purchase of overnight accommodation and catering services which that taxable person re-invoices to other taxable persons in the context of the provision of tourism services and

— not precluding national legislation, such as that at issue in the main proceedings, which provides for the exclusion from the right to deduct VAT paid on the purchase of overnight accommodation and catering services, that exclusion having been introduced before the accession of the Member State concerned to the European Union and maintained thereafter, in accordance with the second paragraph of Article 176 of Directive 2006/112, and which means that a taxable person, who does not provide tourism services, is deprived of the right to deduct VAT paid on the purchase of such overnight accommodation and catering services which that taxable person re-invoices to other taxable persons.

([1]) OJ C 231, 2.7.2018.

Judgment of the Court (Eighth Chamber) of 2 May 2019 — European Commission v Republic of Croatia

(Case C-250/18) ([1])

(Failure of a Member State to fulfil obligations — Directive 2008/98/EC — Waste treatment — Article 5(1) — Stone aggregate which does not fall within the concept of a 'by-product' — Article 13 — Obligation of Member States to ensure protection of human health and of the environment — Article 15(1) — Obligation to have waste treated by the holder or other designated persons)

(2019/C 220/11)

Language of the case: Croatian

Parties

Applicant: European Commission (represented by M. Mataija, F. Thiran and E. Sanfrutos Cano, acting as Agents)

Defendant: Republic of Croatia (represented by T. Galli and M. Vidović, acting as Agents)

Operative part of the judgment

The Court:

1. Declares that, by failing to consider that the stone aggregate deposited in Biljane Donje (Croatia) is waste, rather than a by-product, and must be treated as waste, the Republic of Croatia has failed to fulfil its obligations under Article 5(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives;

   By failing to take all the measures necessary to ensure that management of the waste deposited in Biljane Donje is carried out without endangering human health or harming the environment, the Republic of Croatia has failed to fulfil its obligations under Article 13 of Directive 2008/98;

   By failing to take the measures necessary to ensure that the holder of the waste deposited in Biljane Donje treats the waste himself or has the treatment handled by a dealer or an establishment or undertaking that carries out waste treatment operations or by a private or public waste collector, the Republic of Croatia has failed to fulfil its obligations under Article 15(1) of Directive 2008/98;

2. Orders the Republic of Croatia to pay the costs.

([1]) OJ C 200, 11.6.2018.

Judgment of the Court (Eighth Chamber) of 2 May 2019 (request for a preliminary ruling from the Juzgado de lo Mercantil no 3 de Madrid — Spain) — Sociedad Estatal Correos y Telégrafos SA v Asendia Spain SLU

(Case C-259/18) ([1])

(Reference for a preliminary ruling — Directive 97/67/EC — Common rules for the development of the internal market in postal services — Provision of the universal postal service — Exclusive rights of the designated operator — Issue of means of payment for postage other than postage stamps)

(2019/C 220/12)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil no 3 de Madrid

Parties to the main proceedings

Applicant: Sociedad Estatal Correos y Telégrafos SA

Defendant: Asendia Spain SLU

Operative part of the judgment

Article 7(1) and Article 8 of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which guarantees to the postal operator designated for the provision of the universal postal service an exclusive right to distribute means of payment for postage other than postage stamps.

([1]) OJ C 221, 25.6.2018.

Judgment of the Court (Tenth Chamber) of 2 May 2019 (request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas — Lithuania) — Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos v Akvilė Jarmuškienė

(Case C-265/18) ([1])

(Reference for a preliminary ruling — Harmonisation of fiscal legislation — Common System of Value Added Tax (VAT) — Directive 2006/112/EC — Special scheme for small enterprises — Articles 282 to 292 — VAT exemption for small enterprises whose annual turnover is below the fixed threshold — Simultaneous supply of two immovable properties in a single transaction — Annual turnover limit exceeded in view of the sale price of one of the two properties — Obligation to pay tax on the total value of the transaction)

(2019/C 220/13)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Appellant: Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

Respondent: Akvilė Jarmuškienė

Other party: Vilniaus apskrities valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

Operative part of the judgment

Articles 282 to 292 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that where a supply, to the same purchaser, comprises two immovable properties, linked by their nature and coming under a single contract of sale, and the annual turnover limit serving as a reference for the purposes of applying the special scheme for small enterprises provided for by that directive is exceeded, the taxable person is required to pay tax on the basis of the entire value of the supply in question, that is to say, taking into account the value of both the properties being supplied, even where taking into account the value of one of those properties would not lead to that annual limit being exceeded.

([1]) OJ C 276, 6.8.2018.

Judgment of the Court (Tenth Chamber) of 2 May 2019 (request for a preliminary ruling from the Curtea de Apel Bacău — Romania) — SC Onlineshop SRL v Agenția Națională de Administrare Fiscală (ANAF), Direcția Generală a Vămilor

(Case C-268/18) ([1])

(Reference for a preliminary ruling — Common Customs Tariff — Tariff classification — Combined nomenclature — Subheadings 85269120 and 85285900 — GPS navigation system with multiple functions)

(2019/C 220/14)

Language of the case: Romanian

Referring court

Curtea de Apel Bacău

Parties to the main proceedings

Appellant: SC Onlineshop SRL

Respondents: Agenția Națională de Administrare Fiscală (ANAF), Direcția Generală a Vămilor

Operative part of the judgment

The combined nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, in the version of Commission Implementing Regulation (EU) 2015/1754 of 6 October 2015, must be interpreted as meaning that multifunctional devices of the kind used in motor vehicles which, like that at issue in the main proceedings, combine, in the same housing, as its primary function, a radio navigation monitor which uses pre-installed GPS navigation applications and, subsidiarily, a radio broadcasting transmitter, an audio/video reproduction apparatus and a screen with a diagonal measurement of approximately 5 inches (12.7 cm), must be classified under subheading 85269120 in that nomenclature.

([1]) OJ C 249, 16.7.2018.

Judgment of the Court (Tenth Chamber) of 2 May 2019 (request for a preliminary ruling from the markkinaoikeus — Finland) — proceedings brought by Oulun Sähkönmyynti Oy

(Case C-294/18) ([1])

(Reference for a preliminary ruling — Energy efficiency — Directive 2012/27/EU — Article 11(1) — Cost of access to metering and billing information — Right of final customers to receive all their bills and billing information relating to their energy consumption free of charge — Electricity network charges — Discount on electricity network charges granted by an electricity retail sales company to customers who have chosen electronic billing)

(2019/C 220/15)

Language of the case: Finnish

Referring court

Markkinaoikeus

Party to the main proceedings

Oulun Sähkönmyynti Oy

Operative part of the judgment

Article 11(1) of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC must be interpreted as not preluding, in circumstances such as those at issue in the main proceedings, a discount on electricity network charges granted by an electricity retail sales company exclusively to final customers who have chosen electronic billing.

([1]) OJ C 240, 9.7.2018.

Judgment of the Court (Ninth Chamber) of 2 May 2019 (reference for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio — Italy) — Lavorgna Srl v Comune di Montelanico, Comune di Supino, Comune di Sgurgola, Comune di Trivigliano

(Case C-309/18) ([1])

(Reference for a preliminary ruling — Public procurement — Directive 2014/24/EU — Labour costs — Automatic exclusion of a tenderer who has failed to state those costs separately in the tender — Principle of proportionality)

(2019/C 220/16)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Lavorgna Srl

Defendants: Comune di Montelanico, Comune di Supino, Comune di Sgurgola, Comune di Trivigliano

Intervener: Gea Srl

Operative part of the judgment

The principles of legal certainty, equal treatment and transparency, as referred to in Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, under which the failure to state labour costs separately, in a financial tender submitted in a public contract award procedure, entails the exclusion of that tender without the possibility of supplementing or amending the tendering documentation, including in a situation where the obligation to state those costs separately is not specified in the tender specifications, in so far as that condition and that possibility of excluding tenders are clearly provided for by national legislation on public procurement procedures in which explicit reference was made to that legislation. However, if the provisions of the call for tenders do not allow tenderers to state those costs in their financial tenders, the principles of transparency and proportionality must be interpreted as not precluding tenderers being allowed to rectify their situation and fulfil the obligations provided for by national legislation in the field within a time limit set by the contracting authority.

([1]) OJ C 268, 30.7.2018.

Order of the Court (Ninth Chamber) of 21 March 2019 (requests for a preliminary ruling from the Audiencia Nacional, Sala de lo Contencioso-Administrativo — Spain) — Telefónica Móviles España SAU (C-119/18), Orange España SAU (C-120/18), Vodafone España SAU (C-121/18) v Tribunal Económico-Administrativo Central

(Joined Cases C-119/18 to C-121/18) ([1])

(Reference for a preliminary ruling — Directive 2002/20/EC — Article 6(1),and part A of the annex — Authorisation of electronic communications networks and services — Telecommunications operators — Operating in an area greater than an Autonomous Community — Annual financial contribution — Participation in the financing of the Corporación de Radio y Televisión Española)

(2019/C 220/17)

Language of the case: Spanish

Referring court

Audiencia Nacional, Sala de lo Contencioso-Administrativo

Parties to the main proceedings

Applicants: Telefónica Móviles España SAU (C-119/18), Orange España SAU (C-120/18), Vodafone España SAU (C-121/18)

Defendant: Tribunal Económico-Administrativo Central

Operative part of the order

Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), must be interpreted as meaning that an annual financial contribution, such as that at issue in the main proceedings, imposed on telecommunications companies operating in Spain that operate in an area greater than that of an Autonomous Community, for the purpose of participating in the financing of public broadcasting, does not fall within the scope of that directive.

([1]) OJ C 161, 7.5.2018.

Order of the Court (Fourth Chamber) of 21 March 2019 — Bruno Gollnisch v European Parliament

(Case C-330/18) ([1])

(Appeal — European Parliament — Rules governing the payment of expenses and allowances to Members of the European Parliament — Parliamentary assistance allowance — Recovery of sums unduly paid)

(2019/C 220/18)

Language of the case: French

Parties

Applicant: Bruno Gollnisch (represented by: B. Bonnefoy-Claudet, lawyer)

Other party to the proceedings: European Parliament (represented by: S. Seyr and C. Burgos, acting as Agents)

Operative part of the order

1. The appeal is dismissed as being, in part, manifestly inadmissible and, in part, manifestly unfounded.

2. Bruno Gollnisch is ordered to pay the costs.

([1]) OJ C 240, 9.7.2018.

Order of the Court (Fourth Chamber) of 21 March 2019 — Mylène Troszczynski v European Parliament

(Case C-462/18 P) ([1])

(Appeal — European Parliament — Rules governing the expenses and allowances of Members of the European Parliament — Parliamentary assistance allowance — Recovery of sums unduly paid)

(2019/C 220/19)

Language of the case: French

Parties

Appellant: Mylène Troszczynski (represented by: F. Wagner, avocat)

Other party to the proceedings: European Parliament (represented by S. Seyr and C. Burgos, acting as Agents)

Operative part of the order

1. The appeal is dismissed as being, in part, manifestly inadmissible and, in part, manifestly unfounded.

2. Ms Mylène Troszczynski shall pay the costs.

([1]) OJ C 364, 8.10.2018

Appeal brought on 7 January 2019 by BI against the order of the President of the General Court delivered on 26 November 2018 in Case T-626/18 AJ BI v European Commission

(Case C-99/19 P)

(2019/C 220/20)

Language of the case: German

Parties

Appellant: BI

Other party to the proceedings: European Commission

The Court of Justice of the European Union (Seventh Chamber) dismissed the appeal by order of 21 May 2019 and ordered the unsuccessful party to pay the costs.

Appeal brought on 18 February 2019 by Vans, Inc. against the judgment of the General Court (Ninth Chamber) delivered on 6 December 2018 in Case T-817/16, Vans, Inc. v European Union Intellectual Property Office (EUIPO)

(Case C-123/19 P)

(2019/C 220/21)

Language of the case: German

Parties

Appellant: Vans, Inc. (represented by: M. Hirsch and M. Metzner, Rechtsanwälte)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO), Deichmann SE

Form of order sought

The appellant claims that the Court should:

1. set aside the judgment of the General Court of the European Union (Ninth Chamber) of 6 December 2018 in Case T-817/16, annul the decision of the Fourth Board of Appeal of 21 September 2016 in Case R2030/2015-4 and reject the opposition in its entirety;

2. order EUIPO to pay the costs of the proceedings.

Grounds of appeal and main arguments

The General Court incorrectly proceeded on the basis that the intervener had sufficiently substantiated the earlier mark; in particular, the General Court interpreted the concept of 'equivalent document' under Rule 19(2)(a)(ii) of Regulation (EC) No 2868/95 ([1]) (now Article 7(2)(a)(ii) of Delegated Regulation (EU) 2018/625) ([2]) too broadly;

— Contrary to what the General Court found, an extract from the TMView database is not an 'equivalent document' within the meaning of Rule 19(2)(a)(ii) of Regulation No 2868/95; this is apparent, first, from the clear wording of the provision, which refers, in respect of authorised equivalent documents, to the nature, not the origin, of the document, and, second, from the rationale behind the provision;

— Nor can an extract from TMView be established as substantiating evidence on the basis of the properties of the database;

— The opposition would therefore have to be rejected simply because the earlier right was not substantiated;

— Furthermore, the General Court incorrectly proceeded on the basis that there is a likelihood of confusion between the signs at issue; in particular, while the General Court noted the existing differences between the signs, it did not consider them any further when assessing the visual similarity of the signs, but merely stated generally and without further reasoning that the signs were visually similar to an average degree.

([1]) Commission Regulation of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ L 303, 15.12.1995, p. 1).

([2]) Commission Regulation of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430 (OJ L 104, 24.4.2018, p. 1).

Appeal brought on 18 February 2019 by Vans, Inc. against the judgment of the General Court (Ninth Chamber) delivered on 6 December 2018 in Case T-848/16, Deichmann SE v European Union Intellectual Property Office

(Case C-125/19 P)

(2019/C 220/22)

Language of the case: German

Parties

Appellant: Vans, Inc. (represented by: M. Hirsch and M. Metzner, Rechtsanwälte)

Other parties to the proceedings: European Union Intellectual Property Office, Deichmann SE

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union (Ninth Chamber) of 6 December 2018 in Case T-848/16 and dismiss the action;

— order Deichmann SE to pay the costs of the proceedings.

Grounds of appeal and main arguments

The General Court incorrectly proceeded on the basis that Deichmann had sufficiently substantiated the earlier marks; in particular, the General Court interpreted the concept of 'equivalent document' under Rule 19(2)(a)(ii) of Regulation No 2868/95 ([1]) (now Article 7(2)(a)(ii) of Delegated Regulation (EU) 2018/625) ([2]) too broadly.

Contrary to what the General Court found, an extract from the TMView database is not an 'equivalent document' within the meaning of Rule 19(2)(a)(ii) of Regulation No 2868/95; this is apparent, first, from the clear wording of the provision, which refers, in respect of authorised equivalent documents, to the nature, not the origin, of the document, and, second, from the rationale behind the provision.

Nor can an extract from TMView be established as substantiating evidence on the basis of the properties of the database.

The opposition would therefore — as the Board of Appeal correctly established — have to be rejected simply because the earlier rights were not substantiated.

([1]) Commission Regulation of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ L 303, 15.12.1995, p. 1).

([2]) Commission Regulation of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430 (OJ L 104, 24.4.2018, p. 1).

Appeal brought on 20 February 2019 by Der Grüne Punkt — Duales System Deutschland GmbH against the judgment of the General Court (Fourth Chamber) delivered on 12 December 2018 in Case T-253/17 Der Grüne Punkt — Duales System Deutschland GmbH v European Union Intellectual Property Office

(Case C-143/19 P)

(2019/C 220/23)

Language of the case: German

Parties

Appellant: Der Grüne Punkt — Duales System Deutschland GmbH (represented by: P. Goldenbaum, Rechtsanwältin)

Other party to the proceedings: European Union Intellectual Property Office (EUIPO)

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal of the General Court (Fourth Chamber) of 12 December 2018 in Case T-253/17;

— grant the form of order sought at first instance and give a final ruling on the dispute or, in the alternative, refer the case back to the General Court of the European Union;

— order EUIPO to pay the costs of the proceedings.

Grounds of appeal and main arguments

The appeal is based on an infringement of EU law, namely Articles 15(1), 51(1)(a) and 66(1) of Regulation No 207/2009. ([1]) The General Court wrongly found use preserving rights for the EU collective mark only in respect of packaging but not, however, in respect of goods in Classes 1 to 34, the product packaging of which is labelled with that mark. While it did correctly find that the public understood the use of the mark, it nevertheless erred in its assessment that this did not constitute use of the goods themselves.

The appellant relies on incorrect legal analysis. It argues that the General Court erred in its legal analysis in so far as it found that the goods were not covered by the use of the collective mark and accepted use of the EU trade mark capable of preserving rights to that mark only in respect of packaging.

For the goods to be covered, it is relevant that the sign indicates that the manufacturer of the goods is a member of the association, rather than indicating that the manufacturer of the packaging is a member of the association. The goods and their packaging are marketed as a sales unit.

The indicative function of the sign is to allow disposal and recovery on the basis of the product manufacturer's membership of the appellant's licensing system by means of its particular dual system.

The goods are covered by that use despite the fact that the marks of various undertakings are also simultaneously used on the relevant product packaging, as it is typical that collective marks are used alongside other marks.

The function of a collective mark does not require that it always indicate specific qualities of goods. Rather, it is sufficient that the collective mark indicates membership of an association.

The decision of the General Court failed sufficiently to take into account the differentiation between the various users of the sign set out in the appellant's regulations governing use of the mark.

The mark was also used for the purpose of creating an outlet and specifically — in accordance with the nature of a collective mark — in an effort to maintain and/or improve the market position of the collective as compared with other competing collectives, in particular competing dual systems, and/or the segment of undertakings not belonging to the association.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version) (OJ 2009 L 78, p. 1).

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 10 April 2019 — PORR Építési Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-292/19)

(2019/C 220/24)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: PORR Építési Kft.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1. Should Article 90(1) and (2) of the VAT Directive ([1]) be interpreted as meaning that Member States must allow the reduction of the VAT taxable amount where it can be demonstrated definitively that the taxable person has not received all or part of the consideration in respect of the transaction entered into by that person?

2. Should the case-law of the Court of Justice of the European Union be interpreted, taking into account, in particular, the judgments in *Almos*, (C-337/13), paragraph 23, *Di Maura*, (C-246/16), paragraphs 20 to 29, and, by analogy, *T-2*, (C-396/16), paragraphs 31 to 45, as meaning that, as regards the obligation of the Member States, laid down in Article 90(1) of the VAT Directive, to reduce a posteriori the taxable amount, a distinction must be made between total or partial non-payment of the consideration by the purchaser and the situation in which the sum due to the seller has become definitively unrecoverable, so that, in the first situation, the Member State may make use of the exception provided for in Article 90(2), whereas in the second situation use of that exception is precluded and the Member State must, in any event, permit the taxable amount to be reduced a posteriori?

([1]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p.1)

Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Lithuania) lodged on 16 April 2019 — XT v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

(Case C-312/19)

(2019/C 220/25)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Applicant: XT

Defendant: Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

Questions referred

1. Are Article 9(1) and Article 193 of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax to be interpreted as meaning that, in circumstances such as those in the case under consideration, a natural person such as the applicant cannot be regarded as having 'independently' carried out the (economic) activity in question and as having to pay by himself the value added tax on the contested supplies, that is to say, for the purposes of Article 9(1) and Article 193 of Directive 2006/112/EC, is the taxable person liable for the obligations at issue to be taken to be the joint activity/partnership (the participants in the joint activity collectively; in the instance under consideration, the applicant and his business partner collectively) — which under national law is not regarded as a taxable person and does not enjoy legal personality — and not solely a natural person such as the applicant?

2. If the first question is answered in the affirmative, is Article 193 of Directive 2006/112/EC to be interpreted as meaning that, in circumstances such as those in the case under consideration, VAT is paid individually by each of the participants (in the instance under consideration, the applicant and his business partner) in the joint activity/partnership — which joint activity/partnership is, under national law, not regarded as constituting a taxable person and does not enjoy legal personality — on the part of each payment by way of consideration that is received by them (or is receivable by or owed to them) for the taxable supplies of immovable property? Is Article 287 of Directive 2006/112/EC to be interpreted as meaning that, in such circumstances such as those in this case, the annual turnover referred to in that provision is established by taking into account the entire revenue of the joint activity (received collectively by the participants in the joint activity)?

([1]) OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Germany) lodged on 18 April 2019 — BY and CZ v Federal Republic of Germany

(Case C-321/19)

(2019/C 220/26)

Language of the case: German

Referring court

Oberverwaltungsgericht für das Land Nordrhein-Westfalen

Parties to the main proceedings

Applicants: BY, CZ

Defendant: Federal Republic of Germany

Questions referred

1. Can an individual toll-payer rely, before national courts, on compliance with the provisions regarding the calculation of the toll under Article 7(9) and Article 7a(1) and (2) of Directive 1999/62/EC as amended by Directive 2006/38/EC ([1]) (regardless of the arrangements in Article 7a(3) in conjunction with Annex III thereto), if, in the statutory determination of tolls, the Member State did not fully comply with those provisions or incorrectly implemented them to the detriment of the toll-payer?

2. If Question 1 is to be answered in the affirmative:

   (a) Can traffic police costs also be treated as costs of operating the infrastructure network within the meaning of the second sentence of Article 7(9) of Directive 1999/62/EC as amended by Directive 2006/38/EC?

   (b) Does an overrun of the infrastructure costs which can be taken into account in the weighted average toll in the range of

      (aa) up to 3.8%, in particular when account is taken of costs which cannot in principle be taken into account,

      (bb) up to 6 %

      lead to a breach of the cost overrun prohibition under Article 7(9) of Directive 1999/62/EC as amended by Directive 2006/38/EC, with the result that national law is, to that extent, not applicable?

3. If Question 2(b) is to be answered in the affirmative:

   (a) Is the judgment of the Court of Justice of 26 September 2000 (C-205/98, ([2]) paragraph 138) to be understood as meaning that a substantial cost overrun can ultimately no longer be offset by an ex post calculation of costs filed in judicial proceedings, which is intended to prove that the fixed toll rate ultimately does not actually exceed the costs which can be taken into account?

   (b) If Question 3(a) is to be answered in the negative:

      Is an ex post calculation of costs after the end of the calculation period to be based entirely on the actual costs and the actual toll revenue, that is to say, not on the assumptions made in this regard in the original predictive calculation?

([1]) OJ 2006 L 15, p. 8.
([2]) OJ 2000 C 335, p. 10.

Reference for a preliminary ruling from High Court (Ireland) made on 23 April 2019 — KS, MHK v The International Protection Appeals Tribunal, the Minister for Justice and Equality, Ireland and the Attorney General

(Case C-322/19)

(2019/C 220/27)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicants: KS, MHK

Defendants: The International Protection Appeals Tribunal, the Minister for Justice and Equality, Ireland and the Attorney General

Questions referred

1. Where in interpreting one instrument of EU law that applies in a particular member state an instrument not applying to that member state is adopted at the same time, may regard be had to the latter instrument in interpreting the former instrument?

2. Does Art. 15 of the Reception Conditions Directive (Recast) 2013/33/EU ([1]) apply to a person in respect of whom a transfer decision under the Dublin III Regulation, Regulation (EU) No. 604/2013 ([2]), has been made?

3. Is a member state in implementing Art. 15 of the Reception Conditions Directive (Recast)) 2013/33/EU entitled to adopt a general measure that in effect attributes to applicants liable for transfer under the Dublin III Regulation, Regulation (EU) No. 604/2013, any delays on or after the making of a transfer decision?

4. Where an applicant leaves a member state having failed to seek international protection there and travels to another member state where he or she makes an application for international protection and becomes subject to a decision under the Dublin III Regulation, Regulation (EU) No. 604/2013, transferring him or her back to the first member state, can the consequent delay in dealing with the application for protection be attributed to the applicant for the purposes of Art. 15 of the Reception Conditions Directive (Recast)) 2013/33/EU?

5. Where an applicant is liable to transfer to another member state under the Dublin III Regulation, Regulation (EU) No. 604/2013, but that transfer is delayed due to judicial review proceedings taken by the applicant which have the consequence of suspending the transfer pursuant to a stay ordered by the court, can the consequent delay in dealing with the application for international protection be attributed to the applicant for the purposes of Art. 15 of the Reception Conditions Directive (Recast)) 2013/33/EU, either generally or, in particular, where it may be determined in those proceedings that the judicial review is unfounded, manifestly or otherwise, or is an abuse of process?

([1]) Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, OJ 2013, L 180, p. 96

([2]) Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ 2013, L 180, p. 31

Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 19 April 2019 — Nobina Finland Oy

(Case C-327/19)

(2019/C 220/28)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: Nobina Finland Oy

Other parties: Helsingin seudun liikenne-kuntayhtymä, Oy Pohjolan Kaupunkiliikenne Ab

Questions referred

1. Does Directive 2004/17/EC [1] of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ('Directive 2004/17') preclude an interpretation according to which, in a situation in which a tender can be submitted for several or all of the lots of a contract, a contracting authority can limit, by means of a clause included in the invitation to tender, the number of lots for which a single tenderer can be awarded a contract (a lot award limitation clause)?

2. Pursuant to the lot award limitation clause included in the call for competition for bus transport at issue, if the components of the subject matter of a contract that are won by a tenderer exceed the maximum number of vehicle days laid down in the clause, then the subject matter of the contract for which the points difference between the best and the second-best tender, multiplied by the number of vehicles of that subject matter of the contract, is the smallest is transferred to the tenderer that submitted the second-best tender. The use of the lot award limitation clause can mean that, on the basis of the call for competition, the tenderer that submitted the best tender for the subject matter of the contract in question is awarded a contract for fewer vehicle days in total than the tenderer that submitted the second-best tender for the subject matter of the contract.

   a) Can the specific outcome to which the inclusion of the lot award limitation clause in the call for competition could lead be taken into account when assessing the permissibility of the lot award limitation clause, or must this be assessed on an abstract basis, so that the inclusion of a lot award limitation clause such as that in question in the main proceedings is either permissible or not permissible pursuant to Directive 2004/17?

   b) Are the circumstances specified in the invitation to tender as justification for the clause — which are related to the preservation of the competitive situation in public bus transport in the Helsinki region and the reduction of the operational risk that the assumption of responsibility for a high volume of transport and the establishment of transport on changed lines entail for the quality of the transport service — relevant to the assessment of the permissibility of a lot award limitation clause such as that at issue in the main proceedings?

[1] OJ 2004 L 134, p. 1.

Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 19 April 2019 — Porin kaupunki

(Case C-328/19)

(2019/C 220/29)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Appellant: Porin kaupunki

Other parties: Porin Linjat OY, Lyttylän liikenne Oy

Questions referred

1. Must Article 1(2)(a) of Directive 2004/18/EC ([1]) of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts be interpreted as meaning that the model of the 'municipality responsible' in accordance with the cooperation agreement between municipalities in question meets the conditions for a transfer of responsibilities which is not covered by the scope of the Directive (C-51/15, *Remondis*) or a horizontal cooperation which is not covered by an obligation to issue a call for tenders (C-386/11, *Piepenbrock* with further references), or does this constitute another case altogether?

2. If the model of the 'municipality responsible' in accordance with the cooperation agreement meets the conditions for a transfer of responsibilities: In the event that contracts are awarded after responsibilities have been transferred, is the public entity to which the responsibilities have been transferred the contracting authority and is this public entity entitled, on the basis of the responsibilities transferred to it by the other municipalities, to award contracts for services to one of its related entities without a call for tenders in circumstances where the award of these contracts for services would — without the principle of the 'municipality responsible' — have been the responsibility of the municipalities which transferred the responsibility?

3. If, on the other hand, the model of the 'municipality responsible' in accordance with the cooperation agreement fulfils the conditions of a horizontal cooperation: Can the municipalities taking part in the cooperation award contracts for services without issuing calls for tenders to a municipality taking part in the cooperation, which awarded these service contracts to one of its related entities without a call for competitive tenders?

4. As part of the assessment whether a company carries out the essential part of its activities for the municipality by which it is controlled, does the calculation of the turnover related to the municipality take into account the turnover of a company owned by the municipality which operates transport services within the meaning of Regulation (EC) No 1370/2007 ([2]) of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No 1191/69 and (EEC) No 1107/70 (hereinafter: Regulation on Public Passenger Transport Services) to the extent that the company derives this turnover from transport services organised by the municipality as the competent authority within the meaning of the Regulation on Public Passenger Transport Services?

([1]) OJ 2004 L 134, p. 114.
([2]) OJ 2007 L 315, p. 1.

Request for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium) lodged on 24 April 2019 — DA v Romanian Air Traffic Services Administration (Romatsa), Romania, European Organisation for the Safety of Air Navigation (Eurocontrol) — and FC, S. C. European Food S.A., S. C. Starmill S.R. L., S. C. Multipack S.R. L. v Romanian Air Traffic Services Administration (Romatsa), Romania, DA, European Organisation for the Safety of Air Navigation (Eurocontrol)

(Case C-333/19)

(2019/C 220/30)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Appellant: DA

Respondents: Romanian Air Traffic Services Administration (Romatsa), Romania, European Organisation for the Safety of Air Navigation (Eurocontrol)

Other parties: European Commission, FC, S. C. European Food S.A., S. C. Starmill S.R. L., S. C. Multipack S.R. L.

Appellants: FC, S. C. European Food S.A., S. C. Starmill S.R. L., S. C. Multipack S.R. L.

Respondents: Romanian Air Traffic Services Administration (Romatsa), Romania, DA, European Organisation for the Safety of Air Navigation (Eurocontrol)

Other party: European Commission

Questions referred

1. Is Decision (EU) 2015/1470 of the European Commission of 30 March 2015 on State aid SA.38517 (2014/C) (ex 2014/NN) ([1]) to be understood as referring to payments due from Romania even in a case where payments are recovered against Romania as a result of proceedings to enforce the ICSID arbitral award of 11 December 2013 brought before the courts of a Member State other than Romania?

2. Does EU law itself automatically require a court of a Member State (other than Romania), before which an action is brought to oppose proceedings for the enforcement of an ICSID arbitral award which has the force of *res judicata* according to the national procedural rules of that Member State, to reject that award, for the sole reason that a non-definitive decision of the European Commission adopted after the date of the award considers enforcement of that award to be contrary to the EU State aid regime?

3. Does EU law, in particular the principle of cooperation in good faith and the principle of *res judicata*, allow the national court of a Member State (other than Romania) not to comply with its international obligations under the ICSID Convention in a situation where the European Commission has adopted a decision after the date of that award, under which enforcement of the award is regarded as contrary to the EU State aid regime, even when the European Commission participated in the arbitration proceedings (including the action for annulment of the award) and put forward its case in relation to the EU State aid regime?

([1]) Commission Decision (EU) 2015/1470 of 30 March 2015 on State aid SA.38517 (2014/C) (ex 2014/NN) implemented by Romania — Arbitral award […] of 11 December 2013 (notified under document C(2015) 2112) (OJ 2015 L 232, p. 43).

Request for a preliminary ruling from the Augstākā tiesa (Senāts) (Latvia) lodged on 29 April 2019 — Valsts ieņēmumu dienests v SIA 'Hydro Energo'

(Case C-340/19)

(2019/C 220/31)

Language of the case: Latvian

Referring court

Augstākā tiesa (Senāts)

Parties to the main proceedings

Appellant in the appeal on a point of law: Valsts ieņēmumu dienests

Respondent in the appeal on a point of law: SIA 'Hydro Energo'

Question referred

Must the Combined Nomenclature, as set out in Annex I of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, ([1]) amended by Commission Regulation (EU) No 1006/2011 of 27 September 2011, ([2]) be interpreted as meaning that heading 7407 (Copper bars, rods and profiles) includes copper or copper alloy ingots in a rectangular shape, the thickness of which exceeds one-tenth of the width and which are hot-rolled, but which have irregular pores, holes and cracks in their cross-section?

([1]) OJ 1987 L 256, p. 1.
([2]) OJ 2011 L 282, p. 1.

Appeal brought on 1 May 2019 by Région de Bruxelles-Capitale against the order of the General Court (Fifth Chamber) delivered on 28 February 2019 in Case T-178/18 Région de Bruxelles-Capitale v Commission

(C-352/19 P)

(2019/C 220/32)

Language of the case: French

Parties

Appellant: Région de Bruxelles-Capitale (Brussels, Belgium) (represented by: A. Bailleux, lawyer)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the order of 28 February 2019 (T-178/18);

— Rule on the admissibility of the action for annulment brought by the Région de Bruxelles-Capitale against Commission Implementing Regulation (EU) 2017/2324 of 12 December 2017 renewing the approval of the active substance glyphosate in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 ([1]), and, as to the remainder, refer the case back to the General Court;

— Order the Commission to pay the costs of these proceedings and of the proceedings before the General Court.

Pleas in law and main arguments

By the contested order, the General Court declared the action brought by the Région de Bruxelles-Capitale inadmissible on the ground of lack of interest in bringing proceedings. More specifically, the Court held that the Région de Bruxelles-Capitale was not directly concerned by the contested regulation, within the meaning of Article 263(4) TFEU.

In support of its appeal, the Région de Bruxelles-Capitale raises a single plea in law which is divided into two parts.

First, the Court's refusal to examine the conditions for admissibility of the action in the light of Article 9 of the Aarhus Convention was based on an incorrect interpretation of Articles 2(4) and 9 of that Convention and is inadequately reasoned.

Secondly, the General Court's finding that the applicant has not been directly affected results from insufficient reasoning and failure to comply with Article 263(4) TFEU and Articles 20(2), 32(1), 36(3), 41(1), 43(5) and 43(6) of Regulation 1107/2009.

In the second part of its application, developed in the event that the Court grants the application for annulment of the contested order and decides to rule itself on the admissibility of the appeal, the Région de Bruxelles-Capitale sets out the grounds on which its appeal must be declared admissible in so far as it satisfies the conditions of Article 263(4) TFEU.

([1]) OJ 2017 L 333, p. 10.

Appeal brought on 16 May 2019 by Hamas against the judgment of the General Court (First Chamber, Extended Composition) delivered on 6 March 2019 in Case T-289/15 Hamas v Council

(Case C-386/19 P)

(2019/C 220/33)

Language of the case: French

Parties

Appellant: Hamas (represented by: L. Glock, avocate)

Other parties to the proceedings: Council of the European Union, European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of 6 March 2019, *Hamas* v *Council*, T-289/15;

— give final judgment in the matters that are the subject of the appeal;

— order the Council to pay all the costs of the proceedings before the General Court and the Court of Justice.

Grounds of appeal and main arguments

The applicant relies on four grounds of appeal.

First, in holding that the facts set out in paragraph 15 of Annex A and paragraph 17 of Annex B to the statement of reasons for the acts of March 2015 were invoked independently by the Council, the General Court distorted the evidence before it, substituted its own grounds for those of the author of the contested acts, failed to comply with the obligation to state reasons for its decision and deprived the applicant of the ability to prepare its defence.

Secondly, the General Court infringed Article 1(4) of Common Position 2001/931 by accepting that a decision of an administrative authority had been taken by a competent authority within the meaning of that provision, even though it had never been subject to judicial review.

Thirdly, the General Court infringed Article 1(4) of Common Position 2001/93, Article 296 TFEU, and the applicant's rights of the defence and right to effective judicial protection by holding that the British decision was a condemnation decision and that the Council was therefore obliged to defer as far as possible to the assessment conducted by the authority that adopted it.

Fourthly, in holding that Hamas and Hamas IDQ were a single entity, the General Court infringed the rules on the burden of proof, allowed the Council to alter its grounds in the course of the proceedings, took account of evidence without checking its veracity, breached the *audi alteram partem* rule in relation to the facts, distorted the evidence before it and breached the principle of the independence of proceedings.

Order of the President of the Court of 8 March 2019 (request for a preliminary ruling from the Nejvyšší správní soud — Czech Republic) — D. H. v Ministerstvo vnitra

(Case C-704/17) ([1])

(2019/C 220/34)

Language of the case: Czech

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 83, 5.3.2018.

Order of the President of the Court of 3 April 2019 (request for a preliminary ruling from the Nederlandstalige rechtbank van eerste aanleg Brussel — Belgium) — Oracle Belgium BVBA v Belgische Staat

(Case C-318/18) ([1])

(2019/C 220/35)

Language of the case: Dutch

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 294, 20.8.2018.

Order of the President of the Court of 29 March 2019 (request for a preliminary ruling from the Amtsgericht Erding — Germany) — U.B., T.V. v Eurowings GmbH

(Case C-776/18) ([1])

(2019/C 220/36)

Language of the case: German

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 82, 4.3.2019.

Order of the President of the Court of 28 February 2019 (request for a preliminary ruling from the Amtsgericht Köln — Germany) — QG v Germanwings GmbH

(Case C-7/19) ([1])

(2019/C 220/37)

Language of the case: German

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 122, 1.4.2019.

GENERAL COURT

Judgment of the General Court of 8 May 2019 — Islamic Republic of Iran Shipping Lines and Others v Council

(Case T-434/15) ([1])

(Common foreign and security policy — Restrictive measures taken against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Non-contractual liability — Sufficiently serious breach of a rule of law conferring rights on individuals)

(2019/C 220/38)

Language of the case: English

Parties

Applicants: Islamic Republic of Iran Shipping Lines (Tehran, Iran) and the six other applicants whose names are set out in the Annex to the judgment (represented by: M. Taher, Solicitor, M. Malek QC, and R. Blakeley, Barrister)

Defendants: Council of the European Union (represented by: M. Bishop and H. Marcos Fraile, acting as Agents)

Re:

Application, pursuant to Articles 268 and 340 TFEU, for compensation for the damage allegedly suffered by the applicants as a result of the inclusion of their names on the lists set out in Annex II to Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39), in the Annex to Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2010 L 195, p. 25), in the Annex to Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413 (OJ 2010 L 281, p. 81), in Annex VIII to Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1) and in Annex IX to Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 (OJ 2012 L 88, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Islamic Republic of Iran Shipping Lines and the other applicants whose names are set out in the Annex to bear their own costs and to pay those incurred by the Council of the European Union.*

([1]) OJ C 328, 5.10.2015.

Judgment of the General Court of 8 May 2019 — Export Development Bank of Iran v Council

(Case T-553/15) ([1])

(Non-contractual liability — Common foreign and security policy — Restrictive measures against Iran — Freezing of funds — Compensation for the damage allegedly sustained by the applicant following the inclusion and maintenance of the applicant's name on the list of persons and entities subject to the freezing of funds and economic resources at issue — Jurisdiction of the General Court — Sufficiently serious breach of a rule of law conferring rights on individuals)

(2019/C 220/39)

Language of the case: French

Parties

Applicant: Export Development Bank of Iran (Tehran, Iran) (represented by: J.-M. Thouvenin, lawyer)

Defendant: Council of the European Union (represented by: V. Piessevaux and M. Bishop, acting as Agents)

Intervener in support of the defendant: European Commission (represented by: A. Aresu and R. Tricot, acting as Agents)

Re:

Application based on Article 268 TFEU seeking compensation for the damage allegedly sustained by the applicant as a result of the restrictive measures adopted against it.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Export Development Bank of Iran to bear its own costs and pay those incurred by the Council of the European Union.*

3. *Orders the European Commission to bear its own costs.*

([1]) OJ C 398, 30.11.2015.

Judgment of the General Court of 30 April 2019 — Alvarez and Bejarano and Others v Commission

(Case T-516/16 and T-536/16) ([1])

(Civil service — Officials — Members of the contract staff — Reform of the Staff Regulations — Less favourable scheme for the flat-rate payment of travel expenses and for the increase in annual leave by way of additional days off as travelling time — Link between the grant of those entitlements and the expatriate status — Abolition of the reimbursement of annual travel expenses and travelling time)

(2019/C 220/40)

Language of the case: French

Parties

Applicant: Maria Alvarez y Bejarano (Namur, Belgium) and the 11 other applicants whose names appear in the annex to the judgment (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission (represented initially by J. Currall and G. Gattinara, and subsequently by G. Gattinara and F. Simonetti, acting as Agents)

Interveners in support of the defendant: European Parliament (represented initially by E. Taneva and M. Ecker, acting as Agents), Council of the European Union (represented initially by M. Bauer and M. Veiga, and subsequently by M. Bauer and R. Meyer, acting as Agents)

Re:

Actions pursuant to Article 270 TFEU for annulment of the decisions no longer to allow the applicants, as of 1 January 2014, travelling time or reimbursement of annual travel costs so that they may maintain a connection with their place of origin.

Operative part of the judgment

The Court:

1. *Orders that Cases T-516/16 and T-536/16 be joined for the purposes of the judgment;*

2. *Dismisses the actions;*

3. *Orders Ms Maria Alvarez y Bejarano and the other officials and members of staff of the European Commission whose names appear in the annex to pay the costs;*

4. *Orders the Council of the European Union and the European Parliament each to bear their own costs.*

([1]) OJ C 421, 24.11.2014 (case initially registered at the European Union Civil Service Tribunal as Case F-85/14 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 30 April 2019 — Ardalic and Others v Council

(Case T-523/16 and T-542/16) ([1])

(Civil service — Officials — Members of the contract staff — Reform of the Staff Regulation — Less favourable scheme for the flat-rate payment of travel expenses and for the increase in annual leave by way of additional days off as travelling time — Link between the grant of those benefits and expatriate or foreign resident status — Abolition of the reimbursement of annual travel expenses and of travelling time)

(2019/C 220/41)

Language of the case: French

Parties

Applicants: Jakov Ardalic (Brussels, Belgium) and the 11 other applicants whose names appear in the annex to the judgment (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: Council of the European Union (represented by: initially M. Bauer and M. Veiga, and subsequently M. Bauer and R. Meyer, acting as Agents),

Intervener in support of the defendant: European Parliament (represented by: E. Taneva and M. Ecker, acting as Agents)

Re:

Applications on the basis of Article 270 TFEU seeking annulment of the decisions no longer to grant the applicants, as from 1 January 2014, travelling time or reimbursement of annual travel expenses so that they may maintain a relationship with their place of origin.

Operative part of the judgment

The Court:

1. *Joins Cases T-523/16 and T-542/16 for the purposes of the judgment;*

2. *Dismisses the actions;*

3. *Orders Mr Jakov Ardalic and the other officials or members of staff of the Council of the European Union whose names appear in the annex to the judgment to pay the costs;*

4. *Orders the European Parliament to pay its own costs.*

([1]) OJ C 448, 15.12.2014 (case initially registered at the European Union Civil Service Tribunal as Case F-100/14 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 8 May 2019 — PT v EIB

(Case T-571/16) ([1])

(Civil service — Members of staff of the EIB — Reports procedure — Career evaluation report — 2014 appraisal exercise — Pre-litigation procedure — Admissibility — Right to be heard — Principle of the presumption of innocence — Liability — Non-material damage)

(2019/C 220/42)

Language of the case: Swedish

Parties

Applicant: PT (represented by: E. Nordh, lawyer)

Defendant: European Investment Bank (represented initially by G. Nuvoli, E. Raimond, T. Gilliams and G. Faedo, and subsequently by G. Faedo and M. Loizou, acting as Agents, and by M. Johansson, B. Wägenbaur, lawyers, and J. Currall, Barrister)

Re:

Application based on Article 270 TFEU and Article 50a of the Statute of the Court of Justice of the European Union and seeking, in the first place, annulment of: (i) the EIB decision establishing the definitive version of the applicant's staff report for the 2014 appraisal exercise; (ii) the applicant's appraisal report for the 2014 appraisal exercise; (iii) the EIB decisions, for 2015, neither to promote him, grant him an individual bonus nor increase his salary by 1.20% and; in the second place, compensation for the damage allegedly sustained by the applicant.

Operative part of the judgment

The Court:

1. *Annuls PT's appraisal report for the 2014 appraisal exercise;*

2. *Orders the European Investment Bank (EIB) to pay PT the sum of EUR 2 000 in compensation for the non-material damage suffered, together with default interest from the date of delivery of the present judgment at the rate fixed by the European Central Bank (ECB) for its main refinancing operations, increased by 3.5 points;*

3. *Dismisses the action as to the remainder;*

4. *Orders the EIB to pay the costs.*

([1]) OJ C 111, 29.3.2016 (case initially registered before the European Union Civil Service Tribunal under Case No F-145/15 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 8 May 2019 — Stemcor London and Samac Steel Supplies v Commission

(Case T-749/16) ([1])

(Dumping — Imports of certain cold-rolled flat steel products originating in China and Russia — Definitive anti-dumping duty — Registration of imports — Retroactive application of the definitive anti-dumping duty — Implementing Regulation (EU) 2016/1329 — Importer's awareness of the dumping and injury — Further substantial rise in imports likely to seriously undermine the remedial effect of the definitive anti-dumping duty — Article 10(4)(c) and (d) of Regulation (EU) 2016/1036)

(2019/C 220/43)

Language of the case: English

Parties

Applicants: Stemcor London Ltd (London, United Kingdom) and Samac Steel Supplies Ltd (London, United Kingdom) (represented by: F. Di Gianni and C. Van Hemelrijck, lawyers)

Defendant: European Commission (represented by: J.-F. Brakeland, N. Kuplewatzky, T. Maxian Rusche and E. Schmidt, acting as Agents)

Intervener in support of the defendant: Eurofer, Association européenne de l'acier, ASBL (Luxembourg, Luxembourg) (represented by: O. Prost, A. Coelho Dias and S. Seeuws, lawyers)

Re:

Application pursuant to Article 263 TFEU seeking the annulment in part of Commission Implementing Regulation (EU) 2016/1329 of 29 July 2016 levying the definitive anti-dumping duty on the registered imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ 2016 L 210, p. 27).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Stemcor London Ltd and Samac Steel Supplies Ltd to bear their own costs and to pay those incurred by the European Commission and by Eurofer, Association européenne de l'acier, ASBL.*

([1]) OJ C 6, 9.1.2017.

Judgment of the General Court of 8 May 2019 — RW v Commission

(Case T-170/17) ([1])

(Civil Service — Officials — Article 42c of the Staff Regulations — Leave in the interests of the service — Automatic retirement — Interest in bringing proceedings — Admissibility — Scope of the law — Literal, contextual and teleological interpretation)

(2019/C 220/44)

Language of the case: French

Parties

Applicant: RW (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission (represented initially by G. Berscheid and A.-C. Simon, and subsequently by G. Berscheid and B. Mongin, acting as Agents)

Re:

Action under Article 270 TFEU for annulment of the Commission's decision of 2 March 2017 to place the applicant on leave in the interests of the service pursuant to Article 42c of the Staff Regulations of Officials of the European Union and, at the same time, to require him to take compulsory retirement pursuant to subparagraph 5 of that provision.

Operative part of the judgment

The Court:

1. *Annuls the Commission's decision of 2 March 2017 by which RW was placed on leave in the interests of the service and, at the same time, required to take compulsory retirement;*

2. *Orders the Commission to bear its own costs and to pay those incurred by RW, including those relating to the interlocutory proceedings.*

([1]) OJ C 161, 22.5.2017.

Judgment of the General Court of 30 April 2019. — UPF v Commission

(Case T-747/17) ([1])

(State aid — Corporate tax exemption scheme implemented by France in favour of its ports — Decision declaring the aid scheme incompatible with the internal market — Existing aid — Concept of economic activity — Obligation to state reasons — Distortions of competition and effect on trade between Member States — Principle of sound administration)

(2019/C 220/45)

Language of the case: French

Parties

Applicant: Union des Ports de France — UPF (Paris, France) (represented by C. Vannini and E. Moraïtou, lawyers)

Defendant: European Commission (represented by B. Stromsky and S. Noë, acting as Agents)

Re:

Action pursuant to Article 263 TFEU seeking annulment of Commission Decision (EU) 2017/2116 of 27 July 2017 on aid scheme SA.38398 (2016/C, ex 2015/E) implemented by France — Taxation of ports in France (OJ 2017 L 332, p. 24).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Union des ports de France — UPF to pay the costs.*

([1]) OJ C 32, 29.1.2018.

Judgment of the General Court of 30 April 2019 — Chambre de commerce et d'industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission

(Case T-754/17) ([1])

(State aid — General corporate tax exemption scheme implemented by France in favour of its ports — Decision declaring the aid scheme incompatible with the internal market — Existing aid — Concept of economic activity — Services of general interest — Principle of sound administration — Duty to state reasons — Error of assessment)

(2019/C 220/46)

Language of the case: French

Parties

Applicant: Chambre de commerce et d'industrie métropolitaine Bretagne-Ouest (port de Brest) (Brest, France) (represented by: J. Vanden Eynde and E. Wauters, lawyers)

Defendant: European Commission (represented by: B. Stromsky and S. Noë, acting as Agents)

Re:

Action under Article 263 TFEU for annulment of Commission Decision (EU) 2017/2116 of 27 July 2017 on aid scheme SA.38398 (2016/C, ex 2015/E) implemented by France — Taxation of ports in France (OJ 2017, L 332, p. 24).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the chambre de commerce et d'industrie métropolitaine Bretagne-Ouest (port de Brest) to pay the costs.*

([1]) OJ C 42, 5.2.2018.

Judgment of the General Court of 8 May 2019 — Team Beverage v EUIPO (LIEBLINGSWEIN)

(Case T-55/18) ([1])

(EU trade mark — Application for the EU figurative mark LIEBLINGSWEIN — Absolute grounds for refusal — Descriptive character — Lack of distinctive character — Misleading character — Article 7(1)(b), (c) and (g) of Regulation (EU) 2017/1001)

(2019/C 220/47)

Language of the case: German

Parties

Applicant: Team Beverage AG (Wildeshausen, Germany) (represented by: O. Spieker, A. Schönfleisch and M. Alber, lawyers)

Defendant: European Union Intellectual Property Office (represented by: D. Walicka, acting as Agent)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 6 November 2017 (Case R 291/2017-1), concerning an application for registration of the figurative sign LIEBLINGSWEIN as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Team Beverage AG to pay the costs.*

([1]) OJ C 104, 19.3.2018.

Judgment of the General Court of 8 May 2019 — Team Beverage v EUIPO (WEIN FÜR PROFIS)

(Case T-56/18) ([1])

(EU trade mark — Application for the EU figurative mark WEIN FÜR PROFIS — Absolute grounds for refusal — Descriptive character — Lack of distinctive character — Misleading character — Article 7(1)(b), (c) and (g) of Regulation (EU) 2017/1001)

(2019/C 220/48)

Language of the case: German

Parties

Applicant: Team Beverage AG (Wildeshausen, Germany) (represented by: O. Spieker, A. Schönfleisch and M. Alber, lawyers)

Defendant: European Union Intellectual Property Office (represented by: D. Walicka, acting as Agent)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 6 November 2017 (Case R 501/2017-1), concerning an application for registration of the figurative sign WEIN FÜR PROFIS as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Team Beverage AG to pay the costs.*

([1]) OJ C 104, 19.3.2018.

Judgment of the General Court of 8 May 2019 — Team Beverage v EUIPO (WEIN FÜR PROFIS)

(Case T-57/18) ([1])

(EU trade mark — Application for the EU figurative mark WEIN FÜR PROFIS — Absolute grounds for refusal — Descriptive character — Lack of distinctive character — Misleading character — Article 7(1)(b), (c) and (g) of Regulation (EU) 2017/1001)

(2019/C 220/49)

Language of the case: German

Parties

Applicant: Team Beverage AG (Wildeshausen, Germany) (represented by: O. Spieker, A. Schönfleisch and M. Alber, lawyers)

Defendant: European Union Intellectual Property Office (represented by: D. Walicka, acting as Agent)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 6 November 2017 (Case R 502/2017-1), concerning an application for registration of the figurative sign WEIN FÜR PROFIS as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Team Beverage AG to pay the costs.*

([1]) OJ C 104, 19.3.2018.

Action brought on 25 April 2019 — Proodeftiki v Commission

(Case T-271/19)

(2019/C 220/50)

Language of the case: Greek

Parties

Applicant: Proodeftiki ATE (Athens, Greece) (represented by: M. Panagopoulou, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the decision C(2018) 6717 final of the European Commission of 19 October 2018 on the subject of 'State Aid S.A. 50233 (2018/N) — Greece, State aid for the construction of Lamia-Xiniada section of the E65 Motorway';

— order the European Commission to pay all the applicant's legal costs.

Pleas in law and main arguments

In support of the action, the applicant relies on eight pleas in law:

1. The first plea in law is based on the failure to state reasons with respect to the finding of the European Commission which is contained in section 3.3.1.1 of the contested decision in connection with the affirmation of the criterion of the contribution of the aid under consideration to the attainment of objectives of common interest.

2. The second plea in law is based on the failure to state reasons and manifest error of assessment of the law and relevant facts of the case with respect to the finding of the European Commission which is contained in section 3.3.1.2 of the contested decision in relation to the affirmation that the criterion of incentive effect for the Concessionaire was met.

3. The third plea in law is based on manifest error of assessment of the law and relevant facts of the case at issue with respect to the finding of the European Commission which is contained in section 3.3.1.3 and in section 3.3.1.4 of the contested decision in relation to the affirmation of the criterion of the principle of necessity and the principle of proportionality.

4. The fourth plea in law in support of annulment is based on the failure to state reasons with respect to the finding of the European Commission which is contained in section 3.3.1.3 (paragraphs 60-64) of the contested decision.

5. The fifth plea in law in support of annulment is based on the failure to state reasons and manifest error of assessment of the law and relevant facts of the case at issue with respect to the finding of European Commission which is contained in section 3.3.1.3 (paragraphs 66-69) of the contested decision.

6. The sixth plea in law in support of annulment is based on the failure to state reasons with respect to the finding of the European Commission which is contained in section 3.3.1.3 (paragraphs 70-73) of the contested decision.

7. The seventh plea in law in support of annulment is based on the failure to state reasons and manifest error of assessment with respect to the finding of the European Commission which is contained in section 3.3.1.3 (paragraphs 75-80) of the contested decision in relation to the affirmation of the criterion of the proportionality of the aid at issue.

8. The eighth plea in law in support of annulment is based on the failure to state reasons and manifest error of assessment with respect to the finding of the European Commission which is contained in section 3.3.1.5 of the contested decision in connection with the lack of effect on intra-community trade.

Action brought on 24 April 2019 — Target Ventures Group v EUIPO — Target Partners (TARGET VENTURES)

(Case T-273/19)

(2019/C 220/51)

Language of the case: English

Parties

Applicant: Target Ventures Group Ltd (Road Town, British Virgin Islands) (represented by: T. Dolde, P. Homann, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Target Partners GmbH (Munich, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Application for European Union word mark TARGET VENTURES — Application for registration No 13 685 565

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 4 February 2019 in Case R 1684/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs, including the costs incurred in the proceedings before the Cancellation Division and the Second Board of Appeal of EUIPO.

Pleas in law

— Infringement of Article 52(1)(b) of Council Regulation (EC) No 207/2009;

— Infringement of Article 94(1) of Council Regulation (EC) No 207/2009.

Action brought on 27 April 2019 — Front Polisario v Council

(Case T-279/19)

(2019/C 220/52)

Language of the case: French

Parties

Applicant: Front populaire pour la libération de la Saguia el-Hamra et du Rio de Oro (Front Polisario) (represented by: G. Devers, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should

— Declare its action admissible;

— Annul the contested decision;

— Order the Council to pay the costs.

Pleas in law and main arguments

In support of the action against Council Decision (EU) 2019/217 of 28 January 2019 on the conclusion of the agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (OJ 2019 L 34, p. 1), the applicant relies on ten pleas in law.

1. First plea in law, alleging that the Council does not have the power to adopt the contested decision, in that the European Union and the Kingdom of Morocco lack competence to enter into international agreements that include Western Sahara, instead and in the place of the people of that territory, as represented by the Front Polisario.

2. Second plea in law, alleging a failure to comply with the duty to consider all relevant aspects of the case at issue, in that the Council did not take into account the fact that the international agreement, entered into by means of the contested decision, applies on a provisional basis, for a period of 12 years, to the territory of Western Sahara, in breach of its separate and distinct status.

3. Third plea in law, alleging a failure to comply with the duty to examine the question of respect for fundamental rights and international humanitarian law, in that, when it adopted the contested decision, the Council did not consider the question of respect for human rights in occupied Sahrawi territory.

4. Fourth plea in law, alleging infringement of the rights of defence, in that the Council did not initiate any discussion with the Front Polisario, sole representative of the people of Western Sahara, before the adoption of the contested decision.

5. Fifth plea in law, alleging infringement of the core principles and values guiding the European Union's action on the international stage. The applicant takes the view that the international agreement, entered into by means of the contested decision, applies to the territory of Western Sahara, in the context of the Kingdom of Morocco's policy of annexation and the systematic breaches of fundamental rights required for the maintenance of that policy.

6. Sixth plea in law, alleging infringement of the right to self-determination, in that the international agreement, entered into by means of the contested decision, applies to the territory of Western Sahara, in breach of, first, the separate and distinct status of that territory and, second, the Sahrawi people's right to respect for the territorial integrity of their territory.

7. Seventh plea in law, alleging infringement of the principle of the relative effects of treaties, since the people of Western Sahara, as represented by the Front Polisario, did not consent to the international agreement, entered into by means of the contested decision.

8. Eighth plea in law, alleging violation of Western Sahara's airspace, in that the contested decision, by ratifying the illegal practice stemming from the provisional application of the international agreement entered into by means of that decision, results in the inclusion of Sahrawi airspace within the scope of application of that agreement.

9. Ninth plea in law, alleging infringement of the law of international responsibility, in that, by the contested decision, the European Union fails to fulfil, first, its duty not to recognise the illegal occupation of Western Sahara and, second, renders aid and assistance to the maintenance of that situation.

10. Tenth plea in law, alleging breach of the obligation to ensure compliance with international human rights law and international humanitarian law, in that compliance by the European Union with its international obligations towards the people of Western Sahara entails, as a minimum, that the Council should refrain from adopting the contested decision, inasmuch as it allows the entry into force of an international agreement applicable to the part of Western Sahara which is under Moroccan occupation.

Action brought on 3 May 2019 — BigBen Interactive v EUIPO — natcon7 (nacon)

(Case T-287/19)

(2019/C 220/53)

Language of the case: English

Parties

Applicant: BigBen Interactive (Fretin, France) (represented by: M. Chaminade, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: natcon7 GmbH (Hamburg, Germany)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant before the General Court

Trade mark at issue: Application for European Union figurative mark nacon — Application for registration No 13 036 728

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 24 January 2019 in Case R 1745/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs, including those of the opposition and appeal proceedings before the Board of Appeal.

Plea in law

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 13 May 2019 — Think Schuhwerk v EUIPO (Shape of red shoelace aglets)

(Case T-298/19)

(2019/C 220/54)

Language of the case: German

Parties

Applicant: Think Schuhwerk GmbH (Kopfing, Austria) (represented by: M. Gail, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for an EU position mark (Shape of red shoelace aglets) — Application for registration No 15 152 606

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 1 March 2019 in Case R 1170/2018-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to bear its own costs and pay the costs incurred by the applicant.

Pleas in law

— Infringement of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of the principle of equal treatment;

— Infringement of the right to a fair hearing.

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